be specific (see *Mallal's* Supreme Court Practice Volume I at page 284). In this case the denials of the defence are more of a general nature. If in fact the defendant desires to deny that the driver named by the plaintiffs was the defendant's servant or agent he must do so in specific terms.

In determining the question which party has the burden of proof on the issue whether the driver of the car was the servant or agent of the owner, I need cite only two authorities.

In *Barnard* v. *Sully,*[3] Mr. Barnard sued Mr. Sully in the county court for damage done to his van through the negligent driving of Mr. Sully's car. It seems to have been accepted that Mr. Sully was not driving himself, and he denied that the driver was his servant or agent. In the absence of evidence contradicting this denial the county court judge withdrew the case from the jury. Mr. Barnard appealed to a Divisional Court of the King's Bench, but Mr. Sully did not appear and was not represented. Allowing the appeal Scrutton L.J., with whom Greer and Slesser L.JJ. concurred, said:

"No doubt, sometimes motor-cars were being driven by persons who were not the owners, nor the servants or agents of the owners... But apart from authority, the more usual fact was that a motor-car was driven by the owner or the servant or agent of the owner, and therefore the fact of ownership was some evidence fit to go to the jury that at the material time the motor-car was being driven by the owner of it or by his servant or agent. But it was evidence which was liable to be rebutted by proof of the actual facts."

In *Rambarran* v. *Gurrucharran, supra,* Lord Donovan after quoting the above passage said at page 751:

"Where no more is known of the facts, therefore, than that at the time of an accident the car was owned but not driven by *A* it can be said that *A's* ownership affords *some* evidence that it was being driven by his servant or agent."

From these authorities it is clear that where a car is driven by a person other than the owner, the presumption is raised that the driver of the car is the servant or agent of the owner. I think the rule is so laid down because in the course of human conduct whether or not the driver is the servant or agent of the owner or whether or not there is connection between the driver and the owner should be within the knowledge of the owner of the car. In the case here, it is admitted that the defendant was the owner of the car. The presumption is raised that the driver was his servant or agent. It is for the defendant to rebut the presumption by proof of the actual facts. Since he has chosen to remain silent, the irresistible conclusion is that the driver was his servant or agent. I therefore find the defendant liable.

Judgment for the plaintiffs in the sum agreed upon in the event of full liability *i.e.* first plaintiff $2,000 general damages, $500 special damages; second plaintiff $4,000 general damages, $600 special damages. Costs to the plaintiffs.

Judgment for the plaintiffs.

Solicitors: *Pillai & Co.; Drew & Napier.*

PUBLIC PROSECUTOR v. LIM CHING CHUAN

[R.Cr.J. (Mohamed Azmi J.) September 10, 1971]

[Kuala Lumpur — Criminal Revision No. 8 of 1971]

Road Traffic — Road tax licence — Driving motor vehicle with expired road tax licence — No third party risks insurance cover — Road Traffic Ordinance, 1958, ss. 21(1) and 74(1).

Criminal Law and Procedure — Judicial precedent — Conflicting decisions from Malaysia and Singapore — Effect — Revision.

Insurance — Policy terms — Interpretation of proviso — Vehicle driven without there being in force a policy in respect of third party risks — Whether policy covered the driver.

The defendant was charged: (1) under section 22(1) of the Road Traffic Ordinance, for driving a motor-car with expired road tax licence, and (2) under section 74(1) of the same Ordinance, for using the said car at the same time without there being in force a policy of insurance in respect of third party risks. He pleaded guilty to the first charge and was fined $150, but he claimed trial on the second charge. In his defence he produced an insurance policy which on the face of it was still valid at the material time. It contained the following proviso in respect of persons or clauses of persons permitted to drive: "Provided that the person is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been permitted and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle." The learned magistrate found the defendant guilty and sentenced him to a fine of $120 and disqualified him from driving for one year.

The case was brought up for revision because the learned magistrate in his decision relied on the Singapore decision of *Public Prosecutor* v. *Albert See,*[1] but subsequently found it inconsistent with the Malayan decision of *Tan Kuan Chin* v. *Public Prosecutor:*[2]

Held: (1) as there was no evidence that the defendant had not been permitted by law to drive and that he was disqualified by court order from driving the motor-car in question, the defendant appeared to have fallen under the second limb of the proviso to the insurance policy. He had not, therefore, contravened a term of the insurance policy;

(2) it is a well established principle in our judicial system that decisions of a High Court on questions of law are binding on all subordinate courts. Although decisions of a Singapore High Court have a persuasive authority in the courts of this country, in cases where there are conflicting authorities between the two High Courts after "Singapore Day" (August 9, 1965), magistrates and presidents are bound to follow the decisions of our High Court;

(3) thus, the defendant's conviction on the second charge must be quashed, the sentence and disqualification order, set aside.

Cases referred to:-

(1) *Public Prosecutor* v. *Albert See* [1971] 1 M.L.J. 47.

(2) *Tan Kuan Chin* v. *Public Prosecutor* [1959] M.L.J. 252.

CRIMINAL REVISION.

Nik Mohamed bin Nik Yahya (Deputy Public Prosecutor) for the Public Prosecutor.

Defendant appeared in person.

Mohamed Azmi J.: The defendant in this case was charged first under section 22(1) of the Road Traffic Ordinance for driving a motor car No. BH 368 on June 27, 1971 while there was not in force a motor vehicle licence in respect of the said car — the road tax licence having expired on June 15, 1971 — and, secondly, under section 74(1) of the same Ordinance for using the said car on the same date without there

being in force a policy of insurance in respect of third party risks. He pleaded guilty to the first charge and was fined $150. On the second charge, he claimed trial and in his defence he produced an insurance policy which on the face of it was still valid at the material time, but it contained the following proviso in respect of persons or classes of persons permitted to drive:

"Provided that the person is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been permitted and is not disqualified by order of a court of law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

The learned magistrate relying apparently on the decision of a Singapore case in *Public Prosecutor* v. *Albert See*[1] found the defendant guilty and sentenced him to a fine of $120 and also disqualified him from driving for one year. Subsequently, however, the learned magistrate found the decision in the Singapore case was inconsistent with the Malayan case of *Tan Kuan Chin* v. *Public Prosecutor*[2] and brought the case up for revision.

It seems to me that there are two limbs in the above proviso and that the defendant is covered by the insurance policy so long as he comes under one of them. As there was no evidence that the defendant had not been permitted by law to drive and that he was disqualified by court order from driving the motorcar in question, the defendant appeared to have fallen under the second limb of the said proviso. He had not, therefore, contravened a term of the insurance policy. Be that as it may, in my view, it is a well established principle in our judicial system that decisions of a High Court on questions of law are binding on all subordinate courts; and although decisions of a Singapore High Court have a persuasive authority in the courts of this country, in cases where there are conflicting authorities between the two High Courts after "Singapore Day" (August 9, 1965), magistrates and presidents are bound to follow the decisions of our High Courts.

Under the circumstances, I quash the conviction on the second charge and set aside the sentence imposed as well as the order of disqualification. The fine of $120, if already paid, should be refunded to the defendant.

Conviction quashed. Sentence and order of disqualification set aside.

SAMIVELLU v. PUBLIC PROSECUTOR

[A.Cr.J. (Mohamed Azmi J.) October 1, 1971]

[Kuala Lumpur — Criminal Appeal No. 77 of 1971]

Internal Security — Proclaimed area — Behaving in a manner with intent to provoke breach of peace in — Public Order (Preservation) Ordinance, 1958, ss. 3 & 9.

Evidence — Internal Security — Omission to produce in evidence Gazette notification of a proclaimed area or certified copy of the proclamation — Effect on prosecution case — Whether court bound to take judicial notice of the proclamation — Evidence Ordinance, 1950, s. 57(1)(a).

Interpretation — Provisions of Public Order (Preservation) Ordinance, 1958 — Relevant interpretation law — Interpretation and General Clauses Ordinance, 1948 — Interpretation Act, 1967, s. 2(2).

The appellant was charged for behaving in a manner with intent to provoke a breach of the peace in an area proclaimed by the Minister under section 3 of the Public Order (Preservation) Ordinance 1958, an offence punishable under section 29 of the said Ordinance.

The learned magistrate found the appellant guilty and sentenced him to six months imprisonment. One ground of appeal, *inter alia*, was that the learned magistrate erred in law in construing section 57 of the Evidence Ordinance. In this case, neither did the charge, preferred against the appellant, quote the *Gazette* notification of the alleged proclamation, nor was a certified copy of the proclamation published by the Minister, produced in evidence by the prosecution. On appeal, appeal,

Held, allowing the appeal: (1) a proclamation or a declaration of renewal made by the Minister under section 3 of the Public Order (Preservation) Ordinance, 1958 comes within the ambit of section 57(1)(a) of the Evidence Ordinance. In this case, the learned magistrate, in construing section 57 of the Evidence Ordinance, is bound only by section 57(1)(a) to take judicial notice of the proclamation when the relevant *Gazette* notification or publication made by the Minister is either quoted in the charge or adduced in evidence;

(2) as there was no evidence that the alleged offence had taken place within a proclaimed area, no *prima facie* case had been made out and the appellant ought to have been acquitted and discharged without his defence being called.

MAGISTRATE'S CRIMINAL APPEAL.

G. Joseph for the appellant.

Radzi bin Tan Sri Sheikh Ahmad (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Mohamed Azmi J.: The appellant was charged for behaving in a manner with intent to provoke a breach of the peace in an area proclaimed by the Minister charged with the responsibility for Internal Security under section 3 of the Public Order (Preservation) Ordinance No. 46/58, an offence punishable under section 29 of the said Ordinance. After hearing the case for the prosecution and the defence, the learned magistrate found the appellant guilty and upon conviction sentenced him to six months imprisonment. The appellant now appeals against conviction and sentence. Of the five grounds of appeal argued before me, I only found one that merits consideration, *viz.* that the learned magistrate erred in law in construing section 57 of the Evidence Ordinance.

Under section 3 of the Public Order (Preservation) Ordinance 1958, the Minister charged with the responsibility of Internal Security may proclaim any area in the Federation as a proclaimed area, and such pro-